

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MOLDEX-METRIC, INC.,

Plaintiff,

vs.

3M COMPANY and 3M INNOVATIVE
PROPERTIES COMPANY,

Defendants.

Civil No. 14-1821 (JNE/FLN)

**DECLARATION OF JAMES E.
HORNSTEIN IN SUPPORT OF
MOLDEX'S OPPOSITION TO
3M'S MOTION FOR PARTIAL
SUMMARY JUDGMENT
AND/OR FOR JUDGMENT ON
THE PLEADINGS**

I, JAMES E. HORNSTEIN, hereby declare and state as follows:

1. I am of fully legal age and am competent to make the statements contained in this Declaration.

2. I am a resident of Studio City, California, and I am an attorney admitted to practice law in the State of California. I am employed by Moldex-Metric, Inc., the plaintiff in this lawsuit. My current title is Vice-President of Operations and General Counsel. In that role, I serve as the lead attorney for Moldex, and I serve on the senior executive team to conduct the operations of the company. In my role as Vice-President of Operations, I oversee or co-manage many aspects of the company's operations including production, R&D, retail distribution, medical, HR, IT, and all legal functions.

3. I was personally involved in Moldex's earliest discussions with the Army about Moldex developing a proposed new hearing protector product at a price lower than the 3M Combat Arms product. Between 2008 through 2011, I and others at Moldex had

a number of calls, meetings, and correspondence with U.S. Army representatives about the dual mode selective attenuation prototype earplugs Moldex was developing.

4. On February 8, 2011, Lt. Col. Marjorie Grantham, who was the Program Manager for the Army Hearing Program at U.S. Army Public Health Command at the time, informed me that the Moldex impulse plug had been approved for procurement by the Army for its Rapid Fielding Initiative and that we would hear from a procurement officer to initiate the procurement process. Shortly thereafter, the first order of Moldex's BattlePlugs (non-corded) was initiated by the Army on March 3, 2011, for 60,000 pairs, through Owens & Minor, a certified U.S. government procurement distributor, which were delivered later that year.

5. Moldex's BattlePlug products come in different sizes, colors and packaging. However, they are all identical with respect to their structural features.

6. Attached to this declaration as Exhibits 1 and 2 are representative images of a set of BattlePlugs.

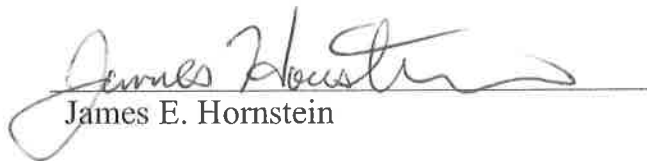
7. All BattlePlug products have only one insertable end, and one channel with multiple constrictions in the sound path. The non-insertable end of the BattlePlug includes a cap, or plug handle, that allows the user to open (for selective attenuation) or block (for maximum attenuation) the BattlePlug's single channel by opening or closing a cap.

8. No BattlePlug products have a hole to the exterior at the center of the plug.

9. Attached to this declaration as Exhibit 3 is a true and correct copy of an internal Moldex product design document produced in this action by Moldex with the production number MM00014037. (FILED UNDER SEAL).

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on: April 22, 2016


James E. Hornstein